

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1079 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MARSHAL SONS & CO. INDIA LTD.

Versus

SURAT DIST PANCHAYAT

Appearance:

MR PV NANAVATI for Petitioner

MR JM BAROT for MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/07/2000

ORAL JUDGEMENT

This is a defendant's appeal against the judgement and decree passed in Special Civil Suit No.228/1975 dated 26th March, 1980 passed by Civil Judge (S.D.) Surat, whereby the plaintiff's suit was decreed

for the principal amount of Rs.19,217/- with interest at the rate of 12% from the date of the suit till realisation and with the cost.

2) In this decision, the appellant M/s Marshall Sons & Co. India Ltd. will be referred to hereinafter as "defendant" and the respondent i.e. The Surat District Panchayat, Dariya Mahal, Surat as "plaintiff". The plaintiff required a road-roller in March, 1970. The defendant was dealing in supply of road-roller and its spare-parts. Its registered office is at Bombay. The defendant is also a company registered under the Companies Act, having its registered office at Calcutta. The defendant, having come to know about the requirements of the plaintiff, made an offer to supply the road-roller to the plaintiff on certain terms and conditions, including the condition that $\frac{1}{3}$ (one-third) of the amount of the total cost i.e. Rs.19,217/- was to be paid in advance for the road-roller manufactured by M/s.Britania Engineering Co. Ltd. The total cost of the road-roller is Rs.57,650/-. The balance $\frac{2}{3}$ (two-third) was to be paid on obtaining the despatch proof through Bank and delivery of the said road-roller was to be made within six to eight weeks from the date of the order in advance. The time of delivery was the essence of the contract. Having made the said offer by representing that it was acting as authorised agent of M/s.Britania Engineering Co. Ltd. and relying upon such representation of the defendant, the plaintiff remitted a sum of Rs.19,217/-, after accepting the said terms and conditions offered by the defendant. The said amount of Rs.19,217/- was sent by cheque No.423183 dated 19-10-1970 drawn on Central Bank of India. The said cheque was received and the amount thereof was encashed by the defendant and receipt No.4826 dated 24-10-1970 was sent back to the plaintiff in token of the receipt of the said amount by the defendant. After the payment of the said amount, the plaintiff pressed for the delivery of the road-roller and the plaintiff also offered to pay balance amount to get delivery of the road-roller. The defendant failed to carry out its obligation on one pretext or the other and failed to deliver the road-roller. The defendant took the stand that there was a lock-out in the factory of M/s.Britania Engineering Co. Ltd. and on account of labour problem, the manufacturing work had been suspended and as soon as the manufacturing starts, the road-roller shall be supplied. The defendant by its letter dated 7-8-1973 expressed its inability to supply the said road-roller and further informed the plaintiff that if the plaintiff was interested in purchasing vibratory road-roller of 2 tonnes capacity instead of the

Diesel road-roller of 8/10 metric tonnes, it would be able to supply the same. The road-roller now proposed by the defendant was totally unsuitable to meet the requirements of the plaintiff. The plaintiff, therefore, refused this proposal. The plaintiff in turn, served the defendant with notice dated 3-9-1975. The defendant neither complied with the notice, nor expressed its willingness to refund the said amount of deposit. The plaintiff has claimed the amount of deposit together with interest at the rate of 12%, which comes to Rs.11,700/and filed the present suit for the total amount of Rs.30,917/-.

3) The defendant resisted the suit by its written statement contending that the defendant was only acting as the agent of M/s. Britania Engineering Co. Ltd. and that the suit was not maintainable against it. Various other objections, including the misjoinder of causes of action and misjoinder of the parties, that they cannot be sued as per the provision of section 230 of the Indian Contract Act, that it was only acting as agent of M/s.Britania Engineering Co. Ltd., etc., and further that the claim in the suit was barred by law of limitation. On the basis of the pleadings of the parties, ten Issues were framed as mentioned at page No.6 of the impugned judgement. The suit was held to be maintainable, the objections regarding misjoinder of causes of action and parties as also other objections were negatived and it was also held that suit was not barred by limitation while holding that it was not a case in which time was essence of the contract. The defendant failed to prove that the amount of Rs.19,217/of the cheque No.423183 had been sent to M/s.Britania Engineering Co. Ltd. for delivery of the road-roller, the plaintiff was able to prove that the defendant committed breach of the contract, the plaintiff was entitled to receive a sum of Rs.19,217/- with interest at the rate of 12% per annum, that the Court had jurisdiction to try the suit and it was found that a sum of Rs.30,917/was due from the defendant and decree was passed accordingly.

4) I have heard Learned Counsel for both the sides and have gone through record which is available before the Court. While this Court is in agreement with the reasoning as well as findings arrived at by the Trial Court, it is found that admittedly;

- 1) The defendant made an offer for supply of road-roller on the terms and conditions as detailed by him and admittedly the amount of

Rs.19,217/- had been received by the defendant from the plaintiff. It is established that the defendant failed to show that this amount of Rs.19,217/- had been ever transmitted to M/s.Britania Engineering Co. Ltd., and this amount has remained with the defendant throughout.

- 2) It is also admitted position between the parties that the road-roller was never supplied to the plaintiff. It is also not in dispute that agreed rate of interest was 12% per annum and it is the common case of the parties that interest was to be 12% per annum as per the agreement between the parties. In this view of the matter, I find that the plaintiff, the Surat District Panchayat, Dariya Mahal, Surat, was certainly entitled to get the amount of deposit with interest. The suit was maintainable, the Court had jurisdiction to try the suit. The suit No.228/1975 was not time barred, which had been filed on 11-12-1975, because the letter dated 7-8-1973 sent to the plaintiff expressing inability to supply the said road-roller is clearly an acknowledgement to find that the suit was within time. The defence with regard to Section 230 of the Indian Contract Act 1872 that the Agent cannot personally enforce, nor be bound by Contracts on behalf of principal is not at all relevant in the facts of the present case, because in this case in fact it was the defendant himself who had represented to the plaintiff that it would supply the road-roller of M/s.Britania Engineering Co. Ltd., and in fact the contract was between the plaintiff and the defendant i.e. M/s.Marshall and Sons Co. India Ltd., and the Surat District Panchayat Dariya Mahal, Surat and even if it is assumed for the sake of argument that the defendant was acting as an agent of M/s.Britania Engineering Co. Ltd., he still cannot get rid of his obligation of refunding the amount which had been received by him from the plaintiff and which had never been transferred to M/s.Britania Engineering Co. Ltd. M/s.Britania Engineering Co. Ltd. was not in picture in this Contract at any point of time, except for the fact that the road-roller to be supplied by the defendant was to be of the said company. Even otherwise the liability of the defendant is clear under Section 70 of the Indian Contract Act which is reproduced as under:

"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

5) It is, therefore, clear that if anything done by a person for another person and even in case any item is delivered and there is no intention to do so gratuitously and the other person enjoys the benefits thereof, the latter is bound to make compensation to the former in respect of it or to restore the thing so done or delivered. In the facts of the present case it is established that the 1/3 amount i.e. of Rs.19,217/- was received by the defendant through the Cheque No.423183 from the plaintiff, the same was encashed by the defendant and there was no question of any intention to do so gratuitously in this regard. Therefore, even if it is assumed that the amount was taken by the defendant for payment to M/s.Britania Engineering Co. Ltd., it is obvious that the same had to be restored to the plaintiff by the defendant as the proposed transaction as was agreed never reached its logical end and the defendant failed to carry out its obligation and hence he was liable to return the amount with interest at agreed rate.

6) For the reasons aforesaid this Court does not find any merit in this appeal. The impugned order passed by the Trial Court does not suffer from any error of fact or law.

7) It is given out by the Learned Counsel for the appellant that the entire amount had been deposited before the Trial Court and the Surat District Panchayat, Dariya Mahal, Surat, has already withdrawn the amount on furnishing security to the satisfaction of the Court on usual terms, as was directed by this Court at the time of passing the stay order in this appeal. These facts as stated by the Counsel for both the sides have been recorded in this order as the C.A. in which the order may have been passed is not available. The plaintiff, the Surat District Panchayat, Dariya Mahal, Surat, is hereby discharged of the surety as may have been given by it in terms of the order dated 19-9-1980 passed in C.A. No.2568 of 1980 in which the rule was made absolute on 21-1-1988 as has been stated before this Court.

8) This appeal is, therefore, dismissed. No order
as to costs.

7-7-2000 (M.R. Calla, J.)

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